



TOWN OF GRAFTON ZONING BOARD OF APPEALS

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MINUTES ZONING BOARD OF APPEALS THURSDAY, MARCH 16, 2023 HYBRID MEETING

2023 SEP - 1 AM 10:40

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SEP 11 2023

A meeting of the Zoning Board of Appeals was held on Thursday, March 16, 2023, via Zoom Conference and in person in Conference Room A at the Grafton Memorial Municipal Center.

Members present: Brian Waller, Kay Reed, William McCusker, William Yeomans, Peter Adams, and Mitali Biswas, Attorney Dan Hill, and Attorney Dennis Murphy.

The meeting started at 6:04 p.m.

Discussion of Safe Harbor with Attorney Dan Hill

- If the Town has certification from DHCD – you still open the public hearing.
 - Within 15 days of opening the public hearing you must invoke Safe Harbor and send notice to applicant and DHCD – can be done at the first public hearing - 760 CMR 56.03.8.
 - Applicant could appeal that assertion – they need to notify DHCD within 15 days – if it is a contested Safe Harbor
 - If the invoking of Safe Harbor is appealed by DHCD to HAC, the public hearing is automatically stayed – no option to continue with the hearing.
 - Can have the hearing as long as you like.
 - Can open and close the hearing in the same night.
 - Can go the full 180 days.
 - If the Board feels the need for housing is still great – still hold the hearing and conduct peer review.
 - Then close the hearing and deliberate and write a decision.
 - Can decide at the end of the hearing, if in Safe Harbor, to deny and the applicant has no right to appeal – if the applicant does not agree to Board recommendations.
 - Still must open and close the hearing within 180 days (6 months)
 - Has the right to close the hearing or deny at any point during the hearing process, if in Safe Harbor?
- If the town falls out of Safe Harbor during the hearing process
 - Still have the right to deny the project, because we were in Safe Harbor when the application was submitted.
 - Applicant has the right to withdraw and re-submit as a regular 40B.
- No change if the applications are LIPs (friendly) or regular 40Bs – to deny or render a decision (in Safe Harbor)
- Must invoke at the beginning of the hearing instead of at the end of the hearing process – regulation changed in 2012 – to put the applicant on notice so they are aware of no ability to appeal the decision to HAC, withdraw and resubmit, or continue with the public hearing.
- Decision rendered under Safe Harbor cannot be appealed to HAC.
- Most developers will not continue with the hearing if the town invokes Safe Harbor
 - Unless discussion with the Board has already been done
- Must weigh the need of affordable housing needs of the town, safety, any adverse impact to the town or surrounding area.
- Should always invoke Safe Harbor, even if you love the project and it is a perfect project.
- No cooling off period – if denied immediately, the applicant can resubmit at any time.
- LIP project approval shows the state we are working towards our affordable housing inventory to keep the town in Safe Harbor
- To remain in Safe Harbor, need to be a .5% increase in affordable housing every year.
- Decision can be denied or approved with conditions – but it cannot be appealed to HAC.
- 3 or more pending comprehensive permit applications submitted under Safe Harbor or not can invoke a stay to

hold off on multiple hearings.

- Bruce Spinney – AHT (Affordable Housing Trust) – working on affording housing inventory and LIPs and other developments that are in different overlay districts and going through the Planning Department
- Matt Often, 79 Old Westboro Road – comments regarding Safe Harbor and affordable housing inventory and the need to look at open space and density of developments.

Public Hearing Case #891.

Chairman reads rules of order.

The clerk reads the legal notice.

Case #891 – 59 Maple Avenue – Special Permit – Change of Use from restaurant to residential

Mr. David Mason would like to tear down the existing restaurant and build a 2-family unit.

Attorney Henry Lane, speaking on behalf of David Mason.

- The current use is non-conforming – restaurant in a residential area.
- Lot is a conforming lot – current use is not.
- By taking down the restaurant and constructing the duplex, there will be less noise and activity in the neighborhood.
- The new building can conform and meet all the required setbacks.
- Keeping current 2 family on property – there will be 2 – 2 family units on the property.

Discussion regarding:

- Changing from restaurant to residential
 - Can change use from restaurant to residential – a bit unusual.
- Of 81L – subdividing lot by Planning Department
- 2 - 2-family units on one lot

Any comments from the Public:

Jeff Walsh, Graves Engineering, concern about the density on the lot

Deb Cote, 57 Maple Avenue, next door, in favor of the 2 families, better for the neighborhood.

Motion made by Mr. McCusker and 2nd by Mr. Yeomans to close the public hearing. On a roll call vote:

Mr. McCusker-yes; Ms. Reed-yes; Mr. Adams-yes; Mr. Yeomans-yes; Chairman-yes. 5-yes, 0-no, motion passed. Public hearing closed.

Motion made by Mr. McCusker and 2nd by Mr. Adams to grant a Special Permit David Mason, Trustee of Hilltop Realty Trust for 59 Maple Avenue to allow a pre-existing, non-conforming restaurant to be replaced by a duplex, residential structure, per Exhibit A, attached. Subject to the following condition: C1. The lot cannot be subdivided. On a roll call vote: Mr. McCusker-yes; Ms. Reed-yes; Mr. Adams-yes; Mr. Yeomans-yes; Chairman-yes. 5-yes, 0-no, motion passed.

Fisherville Terrace LLC – Case #754 – NPC (Notice of Project Change) – size of drainpipe – Continuation

Christopher A’Gostino, attorney for the applicant/owner, Mr. Stephen O’Connell, engineer for the project, Muneer Ahmed, owner.

Discussion of the drainpipe and drainage on Main Street.

Discussion of water calculations and drainage from on top of the development.

- Jeff Walsh, Graves Engineering, engineer for the Town.
 - Comfortable with the design and the size of the pipe
 - Calculations work – looked at MADOT calculations and then added the calculations of the runoff from the development to make sure drain is sufficient.
- The flow of water from the development and hill has never been connected into the drainage on Main Street, that is why it has always flooded.

- Catch basin at the top of the hill in the development will catch some of the water and bring it down to the drain on Main Street
- The difference of 36" versus 30" pipe is about a 30% reduction in the size of flow.
- Would like to see a bond to cover the cost if possibly the 30" pipe fails, and it needs to be replaced with a 36" pipe.

Discussion of changes to conditions of comprehensive permit

- Would like Condition I.7 – regarding the bond for the stormwater management to be changed from the issuance of the 54th occupancy permit to 2 years AFTER the 100th occupancy permit is issued.
- Would like Condition J.1 changed to – all off-site drainage improvements need to be completed PRIOR to any building permits being issued.

Discussion of peak flows

Comments from DPW and Fire read into the record.

Public Comment:

Bernie Gardzina, 23 Ferry Street, South Grafton

- Comments on the original project
- Drainage and the catch basins at the top of the development
- The ledge in the development and the water coming down the hill into the brook.
- Where is the water from the roof drains going?

Discussion of the 24" pipe across the street and the evolution of the drainage system

Discussion of the Cease and Desist

- Arrival and start times – not before 7:00 a.m. – many violations.
- Clean-up of trash on the job site – not have it blow all over the neighborhood.

Discussion with Attorney D'Agostino and Mr. Ahmed regarding concerns and revised conditions.

Steve Pailler, 3 High Point Drive. question regarding the drainage system.

Discussion regarding DEP Stormwater management system.

Board discusses having the attorney's draft the decision for the Board to review and vote on.

Discussion of the type of bond to hold – cash versus real estate.

Motion made by Mr. McCusker and 2 by Mr. Yeomans to continue case #754 – Fisherville Terrace – to March 23, 2023. at 7:00 p.m. to review and vote on the decision. On a roll call vote: Ms. Reed- yes; Mr. McCusker-yes; Mr. Yeomans-yes; Mr. Adams – yes; Chairman – yes. 5-yes, 0-no. motion passed. hearing continued.

Minutes

Minutes table until the next meeting

Reorganization of the Board

Chairman

Motion made by Mr. McCusker and 2nd by Mr. Adams to nominate Brian Waller as Chairman of the Zoning Board of Appeals. On a roll call vote: Mr. McCusker – yes; Ms. Reed -yes; Mr. Yeomans – yes; Mr. Adams-yes; Ms. Biswas-yes. 5-yes, 0-no, Mr. Waller will remain Chairman

Vice Chairman

Motion made by Mr. Waller and 2nd by Mr. Yeomans to nominate William McCusker at Vice Chairman of the Zoning Board of Appeals. On a roll call vote: Mr. McCusker – yes; Ms. Reed -yes; Mr. Yeomans – yes; Mr. Adams-yes; Ms. Biswas-yes; Mr. Waller – yes. 6-yes, 0-no. Mr. McCusker will be Vice Chairman

Clerk

Motion made by Mr. McCusker and 2nd by Mr. Yeomans to nominate Kay Reed as the Clerk for the Zoning Board of Appeals. On a roll call vote: Mr. McCusker – yes; Ms. Reed -yes; Mr. Yeomans – yes; Mr. Adams-yes; Ms. Biswas-yes; Mr. Waller – yes. 6-yes, 0-no. Ms. Reed will remain Clerk.

Motion made by Mr. McCusker and seconded by Mr. Yeomans to adjourn. On a roll call vote: Ms. Reed – yes; Mr. Adams – yes; Mr. Yeomans – yes; Mr. McCusker – yes; Chairman – yes. 5-yes, 0-no, motion passed, meeting adjourned at 9:31 p.m.

Respectfully submitted by Katrina Koshivos

Kay Reed

Kay Reed - Clerk